United Nations A/55/872

General Assembly

Distr.: General
3 April 2001

Original: English

Fifty-fifth session
Agenda item 185

Election of judges of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Memorandum by the Secretary-General

I. Introduction

1. By its resolution 955 (1994) of 8 November 1994, the Security Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994, and to that end to adopt the Statute of the International Criminal Tribunal for Rwanda annexed thereto.

2. Elections for the judges of the two Trial Chambers of the International Criminal Tribunal for Rwanda were held in 1995. The terms of office of the six judges elected in those elections expired on 24 May 1999.

3. Prior to the expiry of the terms of office of the judges so elected, the Security Council, by its resolution 1165 (1998) of 30 April 1998, decided to establish a third Trial Chamber of the International Criminal Tribunal for Rwanda and, to that end, to amend articles 10, 11 and 12 of the Statute of the Tribunal and replace those articles with the provisions set out in the annex to the resolution. It further decided that the elections for the three judges of the third Trial Chamber should be held together with the elections for the six judges of the two existing Trial Chambers.

4. Elections for the nine judges of all three Trial Chambers of the International Criminal Tribunal for Rwanda were held in 1998. The terms of office of the nine judges elected in those elections are due to expire on 24 May 2003.

5. By its resolution 1329 (2000) of 30 November 2000, the Security Council decided to increase the number of judges in the Appeals Chambers of the International Criminal Tribunal for Rwanda and of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (the "International Tribunal for the Former Yugoslavia"). To that end, it decided, inter alia, to amend articles 11, 12 and 13 of the Statute of the International Criminal Tribunal for

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Rwanda and to replace those articles with the provisions set out in annex II to that resolution. In order that the increase in the number of judges in the Appeals Chambers of the International Tribunals might be made, the Security Council also decided that two additional judges should be elected as soon as possible as judges of the International Criminal Tribunal for Rwanda and that the judges so elected should serve until the expiry of the terms of office of the judges currently serving on the Tribunal.

6. Pursuant to what is now article 12, paragraph 2 (a), of the Statute of the International Criminal Tribunal for Rwanda, following the amendments introduced by the Security Council in its resolution 1329 (2000) of 30 November 2000, the Legal Counsel, on behalf of the Secretary-General, invited, by circular letter of 15 January 2001, all States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters to submit their nominations for additional judges of the International Tribunal. In accordance with article 12, paragraph 2 (b), of the Statute, as so amended, each State was invited to nominate, within 60 days of the date of the invitation, up to two candidates, no two of whom were to be of the same nationality. The Legal Counsel also referred to article 11 of the Statute of the International Criminal Tribunal for Rwanda, in accordance with which no two judges of the Tribunal might be nationals of the same State, and advised States that consequently they might not nominate candidates bearing the same nationality as any of the judges who are currently serving on the Tribunal.

7. The four nominations which had been received by the Secretary-General within the period stipulated in paragraph 2 (b) of article 12 of the Statute of the International Criminal Tribunal for Rwanda, as amended by the Security Council in its resolution 1329 (2000) of 30 November 2000, were forwarded by the Secretary-General to the President of the Security Council, in accordance with paragraph 2 (c) of article 12, as so amended, by means of a letter dated 22 March 2001 (S/2001/262). By means of a letter dated 22 March 2001, the Legal Counsel also forwarded to the President of the Security Council, in case the Council should wish to consider it receivable, an additional nomination which had been received by the Secretary-General following the expiry of the period stipulated in paragraph 2 (b) of article 12 of the Tribunal's Statute, as amended. At its 4307th meeting, on 30 March 2001, the Security Council, in accordance with paragraph 2 (c) of article 12 of the Statute of the International Criminal Tribunal for Rwanda, as applied to the current election by paragraph 2 of Security Council resolution 1329 (2000), established a list of five candidates for transmittal to the General Assembly. The list was adopted by the Council in its resolution 1347 (2001) of 30 March 2001 and was formally conveyed to the President of the General Assembly by means of a letter dated 30 March 2001 from the President of the Security Council (A/55/871).

8. The list of candidates for additional judges and the procedure for the election of the additional judges of the International Criminal Tribunal for Rwanda are set out below. The curricula vitae of the candidates will be transmitted to the General Assembly in a separate document (A/55/873).

II. List of candidates for additional judges of the International Criminal Tribunal for Rwanda

9. The list of candidates for additional judges of the International Criminal Tribunal for Rwanda is as follows:

Mr. Mouinou Aminou (Benin)

Mr. Frederick Mwela Chomba (Zambia)

Mr. Winston Churchill Matanzima Maqutu (Lesotho)

Mr. Harris Michael Mtegha (Malawi)

Ms. Arlette Ramaroson (Madagascar).

III. Procedure for the election of additional judges

10. The election of additional judges will be held in accordance with the following provisions:

(a) Article 12 of the Statute of the International Criminal Tribunal for Rwanda, as amended by the Security Council in its resolution 1329 (2000) of 30 November 2000;

(b) Given the similar nature of the election of judges of the International Court of Justice and the

election of judges of the International Criminal Tribunal for Rwanda, it was decided at the time of the previous elections of judges in 1995 and 1998 to follow similar election procedures in the General Assembly. The Secretary-General suggests that these precedents be followed and that rule 151 of the rules of procedure of the General Assembly be applied to the election of additional judges of the International Tribunal.

11. In accordance with article 12, paragraph 2 (d), of the Statute of the International Criminal Tribunal for Rwanda, as amended by the Security Council in its resolution 1329 (2000) of 30 November 2000, the Holy See and Switzerland, being non-member States which maintain permanent observer missions at United Nations Headquarters, will participate in the election in the same manner as the States Members of the United Nations.

12. On the date of the election, the General Assembly will elect two additional judges from the list of candidates submitted to it by the Security Council.

13. According to article 12, paragraph 1, of the Statute of the International Criminal Tribunal for Rwanda, as amended, judges of the Tribunal shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. According to the same provision, due account shall be taken in the overall composition of the Chambers of the International Tribunal of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

14. In accordance with paragraph 2 (d) of article 12 of the Statute of the International Criminal Tribunal for Rwanda, as amended, the candidates who receive an absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

15. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors, whether or not they vote or are allowed to vote. The electors in the General Assembly for current purposes are all 189 Member States, together with the 2 non-member States mentioned in paragraph 11 above. Accordingly, 96 votes constitute an absolute majority in the Assembly for the purpose of the present election.

16. Only those candidates whose names appear on the ballot papers are eligible for election. The electors will indicate the candidates for whom they wish to vote by placing crosses against their names on the ballot papers. Each elector may vote in the first ballot for no more than two candidates.

17. If, in the first ballot, either no candidate or else only one candidate obtains an absolute majority, a second ballot will be held, and balloting will continue in the same meeting, if and as necessary, until two candidates have obtained an absolute majority. In any second or subsequent ballot, each elector may vote for no more than two candidates or, if one candidate has already obtained an absolute majority, for no more than one candidate.

18. Following the practice in the election of judges of the International Court of Justice, any second and subsequent balloting shall be unrestricted. Votes may accordingly be cast in any second or subsequent ballot for any eligible candidate who has not yet obtained an absolute majority.

19. If, in the first ballot, more than two candidates obtain an absolute majority of votes, a second ballot will be held on all candidates, and balloting will continue at the same meeting, if and as necessary, until two candidates, and no more, obtain an absolute majority. In any case, each elector may vote, both in the first ballot and in any subsequent ballot, for two candidates.

20. When two candidates obtain the required majority, the President of the General Assembly shall declare the candidates concerned elected.